

ESTTA Tracking number: **ESTTA594463**

Filing date: **03/25/2014**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	91212483
Party	Plaintiff Ms. Teresa H. Earnhardt
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Submission	Motion to Amend Pleading/Amended Pleading
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Date	03/25/2014
Attachments	Amended NofO 91212483.PDF(214020 bytes)

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

In the matter of Trademark Application
Serial No. 85/686,394
Filed: July 25, 2012
Trademark: BOBBY DALE EARNHARDT
Published: April 30, 2013

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Teresa H. Earnhardt,)	
)	
Opposer)	
)	Opposition No. 91212483
v.)	
)	
Bobby Dale Earnhardt LLC,)	
)	
Applicant.)	
-----X		

AMENDED NOTICE OF OPPOSITION

Teresa H. Earnhardt, an individual having a mailing address of c/o Dale Earnhardt, Inc., 1675 Dale Earnhardt Highway No. 3, Mooresville, North Carolina 28115 ("Opposer"), believes that she will be damaged by the registration of the designation shown in Application Serial No. 85/686,394, filed July 25, 2012, by Bobby Dale Earnhardt LLC, a West Virginia limited liability company having a mailing address of 309 40th St. SE, Charleston, West Virginia 25304 ("Applicant"), and hereby opposes the registration of said designation as a trademark.

As grounds of opposition, it is alleged that:

1. Since at least as early as 1976, and, in any event, since long prior to either July 25, 2012, the filing date of the subject ITU application, or Applicant's actual date of first use of the subject mark, Opposer (directly and/or through her predecessors-in-interest and/or their licensees) has used continuously the designation DALE EARNHARDT as a trademark on

and in connection with various goods in the United States. Among those goods are goods which are classified in International Classes 16, 21, 25 and 28. The availability of such products under the DALE EARNHARDT mark has been promoted and advertised to the public at considerable expense.

2. By reason of the adoption and continuous use of the DALE EARNHARDT mark on and in connection with goods sold by or under license from Opposer, that designation has a distinctive quality and has acquired special and particular significance and very valuable goodwill as identifying Opposer and her goods. As noted above, Opposer's DALE EARNHARDT mark has become particularly distinctive through, *inter alia*, Opposer's extensive use, advertising and promotion of that mark throughout the United States, over a substantial period of time, for a variety of goods, including paper goods and printed material in International Class 16, glassware and other goods in International Class 21, clothing in International Class 25, and toy cars and other goods in International Class 28.

3. Consequently, through such usage and recognition, Opposer has acquired common-law rights in the DALE EARNHARDT designation as a proprietary trademark, which rights extend, without limitation, to the exclusive right to use such designation nationwide in conjunction with Opposer's goods, including, without limitation, goods of the types referenced in Paragraph 2 above.

4. Opposer is also the owner of multiple U.S. registrations for the DALE EARNHARDT mark, including Registration Nos. 1,644,237 and 2,035,107. U.S. Trademark Registration No. 1,644,237 pertains to the use of the DALE EARNHARDT mark on various goods, including, without limitation, goods classified in International Classes 16, 25 and 28, and U.S. Trademark Registration No. 2,035,107 pertains to the use of the DALE EARNHARDT

designation in signature form (the “DALE EARNHARDT Signature Mark”) on various goods, including, without limitation, goods classified in International Classes 16, 21, 25 and 28. (These two registrations shall be referenced collectively hereinafter as “Opposer’s DALE EARNHARDT Registrations.”)

5. Each of Opposer’s DALE EARNHARDT Registrations is valid, subsisting, in full force and effect, and incontestable. Moreover, each of Opposer’s DALE EARNHARDT Registrations serves as prima facie evidence of Opposer’s exclusive right to use the DALE EARNHARDT mark and the DALE EARNHARDT Signature Mark on the goods listed in the respective registration thereof.

6. On July 25, 2012, Applicant filed the application at issue to register the mark BOBBY DALE EARNHARDT (“Applicant’s Mark”) for use on certain goods in each of International Classes 16, 21, 25 and 28.

7. Applicant’s Mark, BOBBY DALE EARNHARDT, incorporates the entirety of Opposer’s DALE EARNHARDT mark. Thus, Applicant’s Mark is visually and aurally similar to Opposer’s DALE EARNHARDT mark. These characteristics create a likelihood of confusion. Moreover, the goods listed in Applicant’s application are the same as, or are closely related to, the goods on which Opposer has used and registered her DALE EARNHARDT mark and her DALE EARNHARDT Signature Mark. This further enhances the likelihood of confusion. Thus, Applicant’s BOBBY DALE EARNHARDT mark, when used on or in connection with the goods listed in the application at issue, is likely to deceive or cause confusion or mistake as to the source or sponsorship of Applicant’s goods in relation to Opposer.

8. Still further, each of the DALE EARNHARDT mark and the DALE EARNHARDT Signature Mark is not only a distinctive mark, but also a famous mark, and each

designation acquired that status as a famous mark prior to either the filing date of the subject intent-to-use application or the first usage in commerce of the Applicant's BOBBY DALE EARNHARDT mark (if any such usage has been made).

9. Hence, the application to register the BOBBY DALE EARNHARDT mark should also be refused on the basis that the usage of that mark on the goods listed in the subject application is likely to cause dilution by blurring of each of the famous DALE EARNHARDT mark and the DALE EARNHARDT Signature Mark, so as to be unlawful pursuant to 15 U.S.C. § 1125(c).

SUMMARY

10. Applicant's application for registration of the BOBBY DALE EARNHARDT designation should be refused under either or both 15 U.S.C. § 1063(a) and 15 U.S.C. § 1052(d).

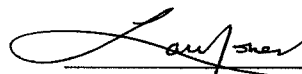
11. Accordingly, Opposer asserts, pursuant to 15 U.S.C. § 1063, that she will be damaged by the issuance of a registration for the BOBBY DALE EARNHARDT mark to Applicant as sought in Trademark Application Serial No. 85/686,394.

WHEREFORE, Opposer prays that the application for registration of Applicant's BOBBY DALE EARNHARDT mark be rejected, that no registration be issued thereon to Applicant, and that this opposition be sustained in favor of Opposer.

Please charge all fees incurred by Opposer in conjunction with this proceeding to the firm's Deposit Account No. 16-0605.

Date: March 25, 2014

Respectfully submitted,



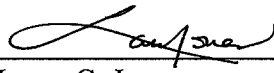
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CERTIFICATE OF SERVICE

I hereby certify that the foregoing "Amended Notice of Opposition" was duly served on Applicant by depositing a copy of same in the United States mail, first-class postage prepaid, on the 25th day of March, 2014, addressed to Applicant's attorney of record as follows:

Matthew H. Swyers
The Trademark Company
344 Maple Ave. W, Suite 151
Vienna, VA 22180-5612



Larry C. Jones